



# CITY OF SNOHOMISH

*Founded 1859, Incorporated 1890*

116 UNION AVENUE □ SNOHOMISH, WASHINGTON 98290 □ TEL (360) 568-3115 FAX (360) 568-1375

## NOTICE OF REGULAR MEETING

### PLANNING COMMISSION

In the  
George Gilbertson Boardroom  
Snohomish School District Resource Center  
1601 Avenue D

**NOTE TIME AND  
LOCATION**

**WEDNESDAY  
January 6, 2016  
6:00 p.m.**

- 6:00 1. **CALL TO ORDER** – Roll Call
- 6:05 2. **ELECT** Chair and Vice Chair for 2016 (*P.1*)
- 6:05 3. **APPROVE** the minutes of the December 2, 2015, regular meeting (*P.3*)
- 6:10 4. **CITIZEN COMMENTS** on items not on the agenda
- 6:15 5. **DISCUSSION ITEM** – Wireless Communication Facility Regulations (*P.11*)
- 9:00 6. **ADJOURN**

**NEXT MEETING:** The next regular meeting is **Wednesday, February 3, 2016**, at 6:00 p.m. in the George Gilbertson Boardroom, Snohomish School District Resource Center, 1601 Avenue D.



## **AGENDA ITEM 2**

**Date:** January 6, 2016  
**To:** Planning Commission  
**From:** Owen Dennison, Planning Director  
**Subject:** **Election of Officers for 2016**

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This agenda item provides for the election of officers for 2016. Chapter 2.16 SMC requires that a chair and vice chair be elected annually, typically in December for the next year. In January 2015, Commissioner Scott was elected Chair and Commissioner Eskridge was elected Vice Chair for 2015. According to the adopted rules, both Commissioner Scott and Commissioner Eskridge are eligible for an additional term in their current positions.

The election procedure used by the Planning Commission is as follows:

1. The Chair opens the floor to members' nominations for Chair.
2. Commissioners may nominate other members or themselves. No second of a nomination is required.
3. A person nominated may decline the nomination.
4. The Chair closes the floor to nominations for Chair.
5. The Chair calls for any discussion on the nomination(s).
6. The Chair calls for a vote on the nomination(s).

**RECOMMENDATION: That the Planning Commission ELECT a Chair and Vice Chair for 2016.**

**ATTACHMENT: SMC 2.16.060**

## **AGENDA ITEM 2**

**2.16.060 Officers, Rules, Election of Officers, Records, and Expenses.** The Commission shall adopt rules and regulations for the conduct of its business, subject to the approval of the City Council. A majority of the membership shall constitute a quorum for the purpose of transacting business. Action by the Commission shall be by majority vote. A tie vote on a motion to approve shall constitute a failure of the motion.

Each December, the Planning Commission shall elect from among its members a chair and vice chair. Such officers shall occupy their respective offices beginning January 1<sup>st</sup> of the following year. Members serving part or all of a one-year term as chair or vice chair shall be eligible for election to one additional consecutive one-year term at that officer position, for a maximum of two consecutive one-year terms. (Ord. 2227, 2011)

A commissioner elected to serve two, consecutive one-year terms as vice chair or chair would, the following year, be ineligible for election to that same officer position. Following one year of ineligibility, the commissioner would again be eligible for election to that same position. (Ord. 2227, 2011)

A commissioner elected to serve two, consecutive one-year terms as vice chair or chair and then two, consecutive one-year terms in the other officer position (four consecutive years total) would, the following year, be ineligible for election to any officer position. Following one year of ineligibility, the commissioner would again be eligible for election to either officer position. (Ord. 2227, 2011)

The City shall provide the Commission with necessary administrative support and expense budget as needed to perform the function described by this chapter.

### **AGENDA ITEM 3**

**CITY OF SNOHOMISH  
REGULAR MEETING OF THE PLANNING COMMISSION  
MEETING MINUTES  
December 2, 2015**

**1. CALL TO ORDER:** The regular meeting of the Planning Commission was called to order by Chair Scott at 6:00 p.m. in the George Gilbertson Boardroom, 1601 Avenue D. The assemblage joined in the flag salute and roll was taken.

**PLANNING COMMISSION**

**MEMBERS PRESENT:**

Christine Wakefield Nichols  
Hank Eskridge  
Laura Scott  
Steve Dana  
Van Tormohlen

**STAFF:**

Owen Dennison, Planning Director  
Brooke Eidem, Associate Planner  
Katie Hoole, Permit Coordinator

**MEMBERS ABSENT:**

Gordon Cole  
Terry Lippincott

**OTHERS PRESENT:**

Derrick Burke, City Councilmember  
1 audience member

2. **APPROVE** the minutes of the November 4, 2015, regular meeting

Mr. Dana moved to approve the November 4, 2015 minutes as written, and Mr. Eskridge seconded. The motion was approved, 5-0.

3. **CITIZEN COMMENTS** on items not on the agenda

There were no citizen comments on items not on the agenda.

4. **ACTION ITEM** – Minor Amendments to Land Use Development Code

Mr. Dennison introduced Associate Planner Brooke Eidem who would present a draft omnibus ordinance addressing a number of items including inconsistencies within the code and in case law, as well as other issues.

Ms. Eidem said the intent of the amendments is to provide clarification and correct inconsistencies. If the Commission is comfortable with the revisions, staff requests action tonight. The first proposal in the ordinance is to add a sentence to SMC 14.65.030 exempting construction of a single family home on an existing lot from the Administrative Development Plan (ADP) requirements, as construction of a single family home typically only requires a simple site plan and building plans. The ADP process is onerous for a single family applicant and adds unnecessary process.

Mr. Dennison added that many zoning codes have a site plan approval process applicable to a wide variety of uses, rather than specific zones; the City's process applies to the Mixed Use,

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Airport Industrial, and Business Park zones. In the Mixed Use designation, all uses currently require site plan approval and single family homes are an allowed use.

Ms. Eidem moved on to SMC 14.207, Land Use Tables. Currently places of worship are conditional uses in the Commercial zone and are not allowed in Mixed Use, while conference centers, considered to have similar impacts, are outright permitted in both designations. The proposal is to make these consistent and allow places of worship as permitted uses in Commercial and Mixed Use designations.

Another proposed change relates to note 2 in the General Services Land Use Table which refers to a child drop off and pick up system. This note was intended to apply to for Child Care but was erroneously applied to Social Services in the Commercial zone. Staff proposes to remove the note from the Social Services use listing and add it to the Child Care use listing in the Commercial designation. Additionally, a modification to the language of the note is proposed to remove the requirement for approval of a schedule for outdoor play areas associated with Childcare uses. A time schedule would be difficult to enforce, and the effectiveness of outdoor play time restrictions at reducing adverse impacts on adjacent properties is assumed to be minimal.

Ms. Eidem said the next revision is in SMC 14.210.110, Setbacks - Modifications. Item A currently requires a Boundary Line Adjustment for an existing building that crosses a property line; any encroachment must be cured before a new permit can be issued for either property. However, it may be difficult for the City to deny a permit for a lot of record with a building encroachment. Mr. Dennison added that existing setback regulations would continue to prohibit approval of new buildings crossing a lot line. Structural encroachments across property lines are typically civil issues between two property owners rather than regulatory issues.

Mr. Tormohlen asked about modifications to an existing building. Mr. Dennison said any addition or modification would continue to be required to meet all setbacks and would not be allowed to cross the property line.

The next revision is proposed in the Business Park designation dimensional requirements. There is an inconsistency between the text in SMC 14.210.230 and the table in SMC 14.210.330 regarding setbacks in the Business Park zone. Staff's proposal is to change all the setbacks in Business Park to zero feet, except where the property abuts a residential designation. In such cases the minimum setback is fifty feet. Office and retail uses are currently allowed to reduce the front and street-facing side yard to zero. As the use of buildings change over time, staff's proposed amendment would make setbacks consistent across all permitted uses. Illustrations of the current discrepancy between setback provisions and staff's proposed revision were shown for comparison in a slideshow. Ms. Eidem noted that compliance with the parking, open space, landscaping, design review, and building/fire code requirements would still be required.

Ms. Eidem said the next revision was in SMC 14.210.230(f), Height Limitation. The current standard allows 45 feet or three stories in the BP designation. With approval of a variance, an additional foot of height for each additional foot of structural setback is currently permitted, up to a maximum of 60 feet or four stories. However, the section does not specify

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whether the variance criteria in Chapter 14.70 would apply. Mr. Dennison described the variance criteria: an applicant must demonstrate there is something about a development site that is different from other sites of the same zoning in the same vicinity and this circumstance is denying the property owner a substantial property right that is available to others. Staff is unclear whether this section was intended to refer to the standard quasi-judicial variance process and require the standard variance justification. Staff also proposes the additional height allowance provision rely exclusively on building height and eliminate the stories measure.

Ms. Wakefield Nichols asked for clarification; Ms. Eidem explained that it didn't make sense to include both feet and stories when using an incremental height allowance of one additional foot in height for each one foot of structural setback. Mr. Dennison added that, from the outside, it doesn't matter how many stories are contained within the building.

In response to a question from Mr. Eskridge, Mr. Dennison described the measurement of building height in Title 14 SMC.

Ms. Wakefield Nichols noted that a measure of stories provided the visual reference within the existing language and felt it addressed the character of a building. Mr. Tormohlen stated that, in looking at the mass of a building, it shouldn't matter how many windows there are. Mr. Dana said that, due to the potential for variability in the height of individual stories, gross height was a better standard. Ms. Wakefield Nichols thought they should keep an eye on character; although, because they are discussing it in the context of the Business Park and Airport Industry designations, it was probably less important.

The next revisions address general clean up of the dimensional tables in SMC 14.210.330: 1) Non-dimensional requirements that are listed elsewhere in the code are proposed for removal. 2) A new footnote is proposed referencing the landscape screening requirements in 14.240. The new footnote replaces the multiple instances of the text "See 14.240 (Landscape)" within the table. 3) The footnote numbering was adjusted. Because Table 2 is a separate table, it makes sense to restart the numbering at one rather than continuing from the list associated with Table 1. 4) In Table 2, old note 11 is amended to correct an inaccurate statement regarding setbacks for lots less than 7,200 square feet.

Ms. Eidem said the final proposal is to remove the specific dollar amount of the School Impact Fee under SMC 14.290.040. The School District adopts a new Capital Facilities Plan every two years. If the District requests a different dollar amount, the City has to amend Chapter 14.290 SMC to incorporate the change. Mr. Dennison added that the City has adopted a fee schedule by resolution which is more easily amended; multiple fees can be updated at once and it doesn't require updating the land use code. Ms. Eidem said the proposal is to reference the fee resolution and keep it up to date, rather than going through the code amendment process every time the School District updates its Capital Facilities Plan.

Ms. Eidem referred to Commissioner Cole's email which suggested allowing primary and secondary schools in the Business Park and Commercial designations as permitted uses. Mr. Dennison added that this could mean small private schools as well as public schools.

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Responding to Mr. Eskridge, Mr. Dennison clarified that these uses are currently prohibited uses in the Business Park and Commercial designations.

Commissioners supported the allowance of primary and secondary schools in the Business Park and Commercial designations.

Mr. Dana moved to approve the code changes as outlined in Attachment A with addition of the reference to schools in the Business Park and Commercial designations as mentioned in Mr. Cole's letter; Ms. Wakefield Nichols seconded. The vote was called and the motion passed 5-0.

#### **5. DISCUSSION ITEM – Wireless Communications Facilities**

Mr. Dennison recapped Mr. Cole's email comments. Public comment was made at the last meeting that the prohibition of wireless communication facilities (WCFs) in active public park space should extend to private parks and tracts within subdivisions. Mr. Cole did not believe WCFs would be an adverse use of park space; he also felt the City should not preclude WCFs in private parks, and the decision should be left to the private property owners.

Commissioners discussed at length the suggestion to ban WCFs in public, recreational, active use, and/or private park space; a revision to 14.242.050(3)(a) was proposed as follows: "Located on City-owned land where vegetation removal is the minimum necessary to allow installation and maintenance of the facilities, and where vegetation adjacent to the WCF location is 80 percent of the height of the WCF where visible from off-site locations."

#### **Citizens' comments:**

Councilmember Derrick Burke agreed with the proposed revision. This topic is clouded because there is more than one issue involved. First, in addition to the unsightliness of the proposal in an active part of town, a big part of public outcry was the deed and covenant on the property. He was surprised to learn there was a history of granting the land for specific uses. The public process is so active in this town that if there is a proposal in an area that is controversial, it won't take long before it hits the public forum. In not being familiar with cell tower law, his second issue was wondering if this would set a precedent for private companies to have jurisdiction over public park land. Finally, he suggested adjusting the tiers so Tier 3 is a standalone category involving all public land with its own process.

Mr. Dennison said a tier encompassing all public lands could include a separate public outreach requirement that would be similar to the process used for a surplussing public land which involves notice and a hearing. It would make Tier 3 exclusive to public property outside the right of way and would trigger a public process that would be more of a policy decision. Apart from final plats, the City Council has been shielded from land use review by having a Hearing Examiner, who has to go purely by code.

Mr. Eskridge suggested adding more public notice to Tier 3 or adding a City Council meeting public hearing to ensure the public is notified. Ms. Wakefield Nichols confirmed the proposal was to discuss WCF proposed on public property at a kind of "town meeting" forum.



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There are lots of things located on public lands that do not require this type of process. She wondered why WCFs would be the only thing we require this for.

Councilmember Burke suggested it was the idea of a private entity exacting its will and its interests on public park land that made it an unordinary situation.

Mr. Dennison said this may be a matter for input from the City Attorney.

Mr. Dennison returned to Mr. Cole's comments; Mr. Cole suggested prohibiting WCFs in private tracts was overstepping, and that if a plat is recorded with a stormwater tract and tot lot tract, the City shouldn't be telling the HOA that it can't lease land for a WCF in these tracts.

Commissioners recommended modification of 14.242.050(4)(a) to read: "In residential designations, only within developed City street rights-of-way or in non-building and non-recreation tracts when supported on wood support structures, where vegetation removal is the minimum necessary to allow installation and maintenance of the facilities, and where vegetation adjacent to the WCF location is 80 percent of the height of the WCF where visible from off-site locations."

Mr. Dennison reviewed the public suggestions from the last meeting to prohibit WCFs where visible from the gateways to the City, where visible from major transportation corridors, and within the "old town" area south of Sixth Street. Prohibiting WCFs visible from gateways would not be easy to regulate; the gateways and distances from them would have to be defined, and gateways can change over time. This concern may be addressed, as far as public parks go, with the earlier proposed modification that the WCF has to be largely screened by existing vegetation. Transportation corridor prohibitions would be even harder because the designations most preferred for new poles, Industrial and Business Park, are primarily viewable from Avenue D and Bickford. Finally, it is possible that creating a regulatory distinction between the areas north and south of Sixth Street may be construed as favoring residents and neighborhoods in the south part of town. Commissioners confirmed they did not recommend including either suggestion in the proposed new code.

Mr. Dennison moved on to base stations and said he thought there was validity to Mr. Cole's suggestion that a preference hierarchy for ground equipment is not necessary. Locating underground base stations in the right of way is problematic as it may lead to a significant amount of private infrastructure within the right of way, which could limit the City's ability to expand the street, install or modify utilities, etc. Additionally, under the proposed wireless design standards, visual impact will be minimized by the requirements for screening from public view, compatibility with surrounding architecture, and minimizing the height, mass, and size of base station equipment. Finally, if the community prefers a base station be located in a building, how to we confirm or refute when someone says they can't find a willing property owner to lease building space or allow construction of a new building? The screening and compatibility criteria in the code should be sufficient. If an applicant has a preference for locating the equipment in a building, or if a property owner wants it in a building to screen it further, that would be a private arrangement between the property owner and the tenant. From staff's perspective, there is little

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gained by a preference hierarchy for base stations and administration of the requirement is problematic.

Mr. Dana asked if the base station would be allowed in the front setback if it is built on the right of way side of an existing structure. For example, the one at the Police Department is on the street side of the building and may encroach in the setback.

Mr. Dennison said the Police Department was in the Mixed Use zone and there was no front setback. If the base station is located within a building, the building would have to comply with setbacks; however, fencing, landscaping, and utility boxes are allowed within the front setback. If it's regarded as a standard outdoor utility, it would be allowed in the setback, but the City has the option to preclude it—we can require that it be screened and outside the setback.

Mr. Dennison confirmed Planning Commission consensus to preclude base station buildings within the front setback.

Mr. Dennison provided new information regarding the distributed antenna system (DAS) in the proposed siting hierarchy, 14.242.050(A)(1)(c). A 2010 court case regarding Clarkstown, New York, established that technology is the purview of the FCC. A jurisdiction can regulate scale, location, and design, but cannot direct the use of a particular technology. The City's regulations can allow DAS as an option for achieving the code's intent, but any preference or requirement for a specific technology is inconsistent with case law. The preference hierarchy will be revised to remove the reference to DAS.

Public notice requirements have been added as a new section, 14.242.150. Eligible facilities would be processed like a standard building permit and would not require public notice. Mr. Dennison asked for direction on whether other types of collocations merited notification. The assumption is that collocations would be below any threshold of concern for the community. Anything that is not collocation on an existing facility would require notice.

Mr. Dana stated that the current standard of providing 300-foot notice is insufficient for typical permits. What is the appropriate notification distance if someone is building an 80 or 100 foot tower?

Mr. Dennison suggested a notification radius of five times the height of the pole for all Tier 3 permits: a 60 foot pole would have a 300 foot radius; a 100 foot pole would have a 500 foot notice; a 200 foot pole would have a 1,000 foot radius. Mr. Dana recommended a minimum notification of 300 feet. The Commissioners agreed.

Mr. Dennison talked about the option for a moratorium on accepting new wireless communications applications that had been raised at a prior Planning Commission meeting. It had been noted that the City of Spokane adopted a moratorium on WCFs. In reviewing the available record, Mr. Dennison noted that the City Attorney for the City of Spokane cautioned the Spokane City Council that the action could result in a lawsuit. Federal law is very specific: irrespective of any moratorium, the clock ticks. A city cannot tell an applicant they can't submit.

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Once they submit, the shot clock runs; if they get to the end of the clock without issuing a decision, the City may be liable for related financial losses.

Mr. Eskridge asked if an applicant, when applying for a WCF, was required to say if they're going to collocate or have plans for collocation in the future. Mr. Dennison said there wasn't a requirement for that but it could be added.

Mr. Dana brought up the prospect of having a consultant, as a lot of the unknowns could be clarified or put to rest with the help of an outside consultant. Mr. Dennison stated that, at a minimum, he would like a professional third party review of the final draft, with opportunity to ask questions to make sure we're following federal law and identifying any gaps.

#### **6. ADJOURN**

Chair Scott adjourned the meeting at 8:22.

Approved this 6<sup>th</sup> day of January, 2016

By: \_\_\_\_\_

**AGENDA ITEM 3**

## **DISCUSSION ITEM 5**

**Date:** January 6, 2016  
**To:** Planning Commission  
**From:** Owen Dennison, Planning Director  
**Subject:** **Wireless Communications Facility Regulations**

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The purpose of this item is to continue the Planning Commission's discussion and direction to staff on amendments to Title 14 SMC to update the City's regulations for wireless communications facilities (WCFs). Prior discussions of draft regulations occurred at the October, November, and December Planning Commission meetings.

The City Council discussed the draft regulations at its December 1, 2015, meeting. In general, the City Council supports the direction of the draft. Several minor word changes were suggested, which have been incorporated into the current draft. Minutes of the City Council's discussion are provided as Attachment B.

As previously discussed, the City's wireless regulations have not been updated for about nine years and are little changed from those adopted in 1998. Wireless facilities are defined as *communications facility-major* and *communications facility-minor*. In general, a new monopole is a *communications facility-major*, and antennas mounted on buildings or extending from utility poles are *communications facilities-minor*. The former are conditional uses where allowed and the latter are permitted uses where allowed, except in the Historic Business designation where they are conditional uses. However, apart from the limited guidance of the conditional use criteria in Chapter 14.65 SMC, current regulations do not specifically limit the height, location, or design of new wireless facilities or require consideration of other, less prominent facility types.

The current regulatory proposal for WCFs would occupy a new chapter in Title 14 SMC. Draft Chapter 14.242 SMC, with prior direction incorporated, is provided as an attachment to this staff report. As discussed by the Planning Commission, the draft regulations include a hierarchy of preferred locations and types of facilities. Applicants would be required to provide justification for a facility type, configuration, or location lower on the preference hierarchy in terms of the functional needs of proposed facilities. The Planning Commission has discussed and received public comment on preferences for towers and antennas.

Revisions to the draft regulations since the December Planning Commission meeting include the following:

- Inclusion of definitions for "distributed antenna system" and "monopole".
- Removal of the reference to residential designations in the prohibition section. Staff believes that restrictions on WCFs in residential designations are adequately covered in the preference hierarchy. A separate qualified prohibition would confuse the issue.
- The preference for distributed antenna systems and small-scale antenna systems has been removed from the preference hierarchy to comply with case law clarifying that

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technology is the purview of the Federal Communications Commission rather than states and local jurisdictions.

- At the Commission's direction, the phrase "protected open space not intended for general recreation or park use" is removed from the preference hierarchy listing for City-owned properties. This opens the door to the potential construction of WCFs in public parks, although the screening requirements will restrict the potential locations where such facilities may be located. Further, as noted below, a new section is proposed to address the public comment component of the City Council's consideration of lease requests.
- Within the fourth preference hierarchy tier, provisions for WCFs in rights-of-way have been broken out from the "non-building and non-recreational tract" allowance for clarity. The language for WCFs in private tracts has been updated to include the screening language directed by the Planning Commission at the December meeting.
- Also within the fourth preference hierarchy tier, language has been added requiring a setback from residential designations equal to the height of the support structure for WCFs in the Commercial, Mixed Use, and Pilchuck District designations.
- As directed by the Planning Commission, the base station section is removed from the preference hierarchy.
- Following legal guidance, new section has been added providing a general exception to the standards where it is demonstrated that compliance will effectively prohibit the provision of wireless communications services. Applicants would be required to demonstrate the visual effects of the exception as well as the justification.
- Following from the Planning Commission's discussion at the December meeting, a new section has been added directing a City Council public hearing on sale, lease, or use of City-owned land for WCFs. Staff evaluated the benefit of combining public lands into one preference tier in the hierarchy. Currently, the hierarchy is based on community values and expectations. Re-sorting the hierarchy for process rather than for preference appears counterproductive to this intent.
- The Third Party Technical Review section has been modified to incorporate additional language stating that the applicant will bear the cost of such peer-reviews.
- The Public Notice section is modified to direct mailed public notice at a radius equal to five times the height of the facility, with a minimum radius of 300 feet.
- New language has been added to the Removal of Abandoned Equipment section to clarify the process and provide an opportunity for rebuttal by the equipment owner.

In addition to the changes noted above, the draft regulations contain other, relatively minor revisions that staff will discuss at the January Planning Commission meeting.

**RECOMMENDATION:** That the Planning Commission DISCUSS the current draft wireless facility regulation chapter and direct staff on revisions.

### **ATTACHMENTS:**

- A. Draft Chapter 14.242 SMC, Wireless Communications Facilities
- B. City Council minutes

## **DISCUSSION ITEM 5**

### ATTACHMENT A

#### Planning Commission Discussion Draft January 6, 2016

**Note:** Code provisions deriving from federal rules are in red text.

### **Chapter 14.242 WIRELESS COMMUNICATIONS FACILITIES**

#### Sections

14.242.010	Purpose
14.242.020	Definitions
14.242.030	Applicability and Exemptions
14.242.040	Prohibitions
14.242.050	Siting Hierarchy
14.242.060	<u>Exception from the Standards.</u>
14.242.060070	Types of WCF Permits Required
14.242.070080	WCF Application Requirements
14.242.080090	Public notice
14.242.090100	Permit Review (“Shot Clock”) Time Periods
14.242.100110	Tier 1 WCF Permit Process and Findings
14.242.110120	Tier 2 WCF Permit Process and Findings
14.242.120130	Tier 3 WCF Permit Process and Findings
14.242.130140	Development Standards
14.242.140150	Conditions of Approval
14.242.150160	Public Notice
14.242.160170	Third Party Technical Review
14.242.170180	Removal of Abandoned Equipment
14.242.180190	Revocation

#### **14.242.010 Purpose.**

The purpose of this chapter is to accommodate wireless communication facilities (WCFs) in a manner that preserves the visual and aesthetic landscape and character of the City and minimizes adverse impacts to residents. These regulations are intended to provide all purveyors of wireless services an equal opportunity to serve the community in accordance with federal law.

A. This chapter is intended to further the following objectives:

1. To establish procedural requirements and substantive criteria applicable to approval or denial of applications to modify existing WCFs or to locate and construct new WCFs in compliance with all applicable law.
2. To minimize the adverse aesthetic impacts associated with WCFs through appropriate ~~technology~~ design and siting.
3. ~~To prioritize the design and location of new WCFs.~~ To encourage the use of Distributed Antenna Systems (DAS) and other small cell systems that use components that are a small fraction of the size of macrocell deployments, and can be installed with little or no impact on utility support structures, buildings, and other existing structures.

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4. To encourage WCFs to locate on utility poles within the public right-of-way where a location in a residential area is necessary to meet the functional requirements of the telecommunication industry as defined by the Federal Communications Commission.
  5. To foster networks of telecommunications facilities that provide adequate wireless communication coverage to customers within the City and serve as an effective part of the City's emergency response network.
  6. To ensure that decisions are made in a timely, consistent and competitively neutral manner.
- B. To further these objectives, the City shall give due consideration to the zoning code, existing land uses, and environmentally and culturally and historically sensitive areas when approving sites for the location of communication towers and antennas.
- C. These objectives are intended to protect the public health, safety, and welfare, to protect property values, and to minimize visual impacts, while furthering the development of enhanced telecommunications services in the City. These objectives were designed to comply with the Telecommunications Act of 1996. The provisions of this chapter are not intended to and shall not be interpreted to prohibit or have the effect of prohibiting personal wireless services. This chapter shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent wireless communication services.
- D. To the extent that any provision of this chapter is inconsistent or conflicts with any other City ordinance, this chapter shall control. Otherwise, this chapter shall be construed consistently with the other provisions and regulations of the City.

### **14.242.020 Definitions.**

The following abbreviations, phrases, terms and words shall have the meanings assigned in the section or, as appropriate, in Chapter 14.100 SMC, as amended, unless the context indicates otherwise. Words that are not defined in this section or elsewhere in this title shall have the meanings set forth in Chapter 5 of Title 47 of the United States Code, Part 1 of Title 47 of the Code of Federal Regulations, and, if not defined therein, their common and ordinary meaning.

- A. "Antenna" means a specific device, the surface of which is used to transmit and/or receive radio-frequency signals, microwave signals, or other signals transmitted to or from other antennas for commercial purposes.
- B. "Base station" means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not include a tower, as defined herein, or any equipment associated with a tower. Base station includes, without limitation,
1. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.



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2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks).
  3. Any structure other than a tower that, at the time the relevant application is filed with the City, under this section, supports or houses equipment described in paragraphs 1-2 above that has been reviewed and approved by the City.
- C. “Collocation” means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communication purposes.
- D. “Distributed Antenna System” or “DAS” means a network consisting of transceiver equipment at a central hub site to support multiple antenna locations throughout the designed coverage area.
- ~~DE.~~ “Eligible facilities request” means any request for modification of an existing tower or base station that, within the meaning of the Spectrum Act, does not substantially change the physical dimensions of that tower or base station, and involves (a) the collocation of new transmission equipment, (b) the removal of transmission equipment, or (c) the replacement of transmission equipment.
- ~~EF.~~ “Eligible support structure” means any tower or base station that exists at the time the application is filed with the City.
- ~~EG.~~ “FCC” means the Federal Communications Commission or successor agency.
- H. “Monopole” means a style of free-standing antenna support structure consisting of a single shaft usually composed of two or more hollow sections that are attached to a foundation on the ground. This type of antenna support structure is designed to support itself without the use of guy wires or other stabilization devices.
- ~~GI.~~ “Project” means a WCF for which a permit is required by the City.
- ~~HJ.~~ “RF” means radio frequency on the radio spectrum.
- ~~IK.~~ “Spectrum Act” means Section 6409(a) of the Middle Class Tax Relief Act and Job Creation Act, 42 U.S.C. §1344(a) (providing, in part, “...a State or local government may not deny, and shall approve, any eligible facilities request for a modification of any existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”).
- ~~IL.~~ “Substantially change” means, in the context of an eligible support structure, a modification of an existing tower or base station where any of the following criteria is met:
1. For a tower located outside of public rights-of-way:
    - a. The height of the tower is increased by more than twenty feet or by more than ten percent, whichever is greater; or

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- b. There is added an appurtenance to the body of the tower that would protrude from the edge of the tower by more than twenty feet or more than the width of the tower structure at the level of the appurtenance, whichever is greater.
- 2. For a tower located in the public rights-of-way and for all base stations:
  - a. The height of the tower is increased by more than ten percent or ten feet, whichever is greater; or
  - b. There is added an appurtenance to the body of that structure that would protrude from edge of the tower by more than six feet; or
- 3. For all base stations:
  - a. The height of the base station is increased by more than ten percent or ten feet, whichever is greater; or
  - b. It involves the installation of more than the standard number of new equipment cabinets for the technology involved, but not more than for four cabinets.
- 4. For either a tower or a base station:
  - a. There is entailed in the proposed modification any excavation or deployment outside the current site of the tower or base station; or
  - b. The proposed modification would cause the concealment or camouflage elements of the tower or base station to be defeated; or
  - c. It does not comply with conditions associated with the prior approval of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds.
- 5. To measure changes in height for the purposes of this section, the baseline is:
  - a. For deployments that are or will be separated horizontally, measured from the original support structure;
  - b. For all others, measured from the dimensions of the tower or base station, inclusive of the originally approved appurtenances and any modifications that were approved by the City or Snohomish County, in the case of annexed facilities, prior to February 22, 2012.
  - c. To measure changes for the purposes of this section, the baseline is the dimensions that were approved by the City or Snohomish County, in the case of annexed facilities, prior to February 22, 2012.

**KM.** “Tower” means any structure built for the sole or primary purpose of supporting any FCC-licensed or FCC-authorized antenna, including any structure that is constructed for wireless communication service. This term does not include base station.

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~~EN.~~ “Temporary WCF” means a nonpermanent WCF installed on a short-term basis, for the purpose of evaluating the technical feasibility of a particular site for placement of a WCF, for providing news coverage of a limited event, or for providing emergency communications during a natural disaster or other emergencies that may threaten the public health, safety and welfare.

**MQ.** “Transmission equipment” means equipment that facilitates transmission of any FCC-licensed or FCC-authorized wireless communication service.

~~NP.~~ “Wireless communications facility” or “WCF” means any antenna, associated equipment, base station, small cell system, tower, and/or transmission equipment.

~~OQ.~~ “Wireless communications service” means, without limitation, **all FCC-licensed backhaul and other fixed wireless services, broadcast, private, and public safety communication services, and unlicensed wireless services.**

### **14.242.030 Applicability and Exemptions.**

The provisions of this chapter shall apply to all applications for new and expanded/altered wireless communication facilities located within the boundaries of the City except the following, which shall be permitted in all land use designations unless otherwise regulated by Title 14 SMC:

- A. Systems for military and government communication and navigation.
- B. Industrial processing equipment and scientific or medical equipment using frequencies regulated by the Federal Communications Commission (FCC).
- C. Hand-held, mobile marine and portable radio transmitters and/or receivers.
- D. Two-way radio used for temporary or emergency services’ communications.
- E. Federally licensed amateur (ham) radio stations and citizen band stations, provided that:
  - 1. No portion of the tower or antenna exceeds the height limits of the applicable land use designation;
  - ~~2. Within a residential designation, the tower and any antennas located thereon shall not have any lights of any kind on them and shall not be illuminated either directly or indirectly by artificial means;~~
  - 3. The tower shall be located a distance equal to or greater than its height from any existing residential structure located on an adjacent parcel;
  - ~~43.~~ Towers shall not be used for commercial purposes; and
  - ~~54.~~ All towers shall meet all applicable state and federal statutes, rules, and regulations, including obtaining a building permit from the City, if applicable.

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F. Receive-only television and satellite dish antennas as an accessory use.

G. A temporary WCF.

### **14.242.040 Prohibitions.**

A. The following new wireless communication facilities are prohibited:

1. Guyed towers.
2. Lattice towers.

B. Unless demonstrated to be necessary and without effective alternative, new monopoles are prohibited in the following locations:

- ~~1. All residential designations;~~
21. Within the boundaries of the Historic District; and
32. Within unopened rights-of-way.

### **14.242.050 Siting Hierarchy.**

~~A.~~ Antenna and Support Structure Siting Preference Hierarchy.

Siting of antennas or support structures shall adhere to the siting hierarchy of this section. The order of preference ranking for antennas or antenna support structures, from highest to lowest, shall be 1 to 4. Except where a WCF among preference ranking 1 types is proposed, the applicant shall file relevant information including but not limited to an analysis and affidavit by a licensed RF engineer demonstrating that, despite diligent efforts to adhere to the established hierarchy within the geographic search area, higher ranking options are not technically feasible or not justified given the location of the proposed wireless communications facility and the need to cover significant gaps in network coverage.

~~1~~A. A WCF that is:

- ~~a~~1. Concealed entirely within a non-residential building
- ~~b~~2. Incorporated into the exterior architecture of an existing building above the first floor to match the building's design.
- ~~c~~3. Designed as a distributed antenna system or similar system of minimized antennas with no antenna extending more than 12 feet above a utility pole or structure other than a building constructed for a non-WCF purpose upon which it is mounted.
- ~~d~~4. Located on an existing monopole or lattice structure in compliance with all original conditions of approval. ~~in the Business Park or Industrial designation.~~
- ~~e~~5. Located on a high-voltage transmission tower within a transmission right-of-way and outside a public street right-of-way.
- ~~f~~6. A new monopole-style WCF with antennas in a canister located with the Business Park or Industrial designation.
- ~~g~~7. Located on ~~the roof of~~ a City water tower.
- ~~h~~8. Except as otherwise listed, ~~A~~any alternative not visible, and not anticipated to become visible, from any off-site location.

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- ~~19.~~ Determined to be consistent with the purpose of this ~~code~~ subsection and resulting in an equivalent or lower visual impact than the WCF alternatives in this subsection due to incorporation of technologies not in common use as of the date of this ordinance.

### **2B.** A WCF that is:

- ~~a~~1. Located on a new or existing utility pole within a City right-of-way and extending no more than ~~20~~25 feet above the existing pole height and having no antenna or other equipment extending more than ~~2.5~~3 feet from the exterior of the pole on which it is mounted.
- ~~b~~2. Located on the flat roof of an existing non-residential building in a commercial or industrial designation and extending no more than 20 feet above the existing roof, provided the WCF is no closer to the edge of the roof than the height of the WCF.

### **3C.** A WCF that is:

- ~~a~~1. Located on City-owned ~~protected open space not intended for general recreational or park use;~~ land where vegetation removal is the minimum necessary to allow installation and maintenance of the facilities, and where vegetation adjacent to the WCF location ~~is~~screens 80 percent of the height of the WCF where visible from off-site locations.
- ~~b~~2. Located on a new or existing utility pole within a City minor arterial and extending no more than 40 feet above the existing pole height and having no antenna or other equipment extending more than ~~2.5~~3 feet from the exterior of the pole on which it is mounted.

### **4D.** WCF not meeting any of the options in Tiers 1 through 3, when no reasonable alternative exists, where the facility height is demonstrated to be the lowest necessary to meet functional requirements, and when consistent with the following provisions:

- ~~a~~1. ~~In residential designations, only within developed City street rights of way or in non-building and non-recreation tracts and only when supported on wood support structures. In developed street rights-of-way adjacent to residential designations where located on wood support structures a maximum of 60 feet in height.~~

2. On non-building and non-recreational tracts within residential designations where vegetation removal is the minimum necessary to allow installation and maintenance of the facilities, and where vegetation adjacent to the WCF screens 80 percent of the height of the WCF from off-site locations.

- ~~B~~3. On publicly owned lands of three acres or larger and located to minimize visibility from and impacts to adjacent ~~residential~~ properties.

- ~~C~~4. Commercial, Mixed Use, and Pilchuck District, ~~Business Park, and Industrial~~ designations, only where located on properties without residential uses and set back at least 20 feet from the front property line The support structure shall be set back a distance equal to the height of the support structure from any residential designation.

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### **B. Base Station or Equipment Enclosure Hierarchy.**

~~Siting of base stations shall adhere to the siting hierarchy of this subsection. The order of ranking, from highest to lowest, shall be 1, 2, and 3. Where a lower preference ranking alternative is proposed, the applicant must demonstrate that a higher ranking option is not technically feasible, or justified given the location or size of the proposed base station.~~

- ~~1. A base station within a city right-of-way that is underground and where the top of the vault is flush with the surrounding grade.~~
- ~~2. A base station that is:
  - ~~a. Attached to an antenna support structure located within city rights-of-way;~~
  - ~~b. Placed within an existing building, provided the use of the building is not single-family residential; or~~
  - ~~c. On the roof of an existing building, provided the use of the building is not single-family residential and is not visible from any adjacent street.~~~~
- ~~3. A base station that is:
  - ~~a. On adjacent property and concealed in the same manner as concealed WCF (i.e., the base station is not readily identifiable as such and is designed to be aesthetically compatible with existing and proposed building(s) and uses on a site); or~~
  - ~~b. On adjacent property; provided, that the base station is fenced and landscaped; or~~
  - ~~c. Inside a building designed primarily to house the base station equipment; or~~
  - ~~d. Otherwise located so as not to be open or visible to public view (e.g., in a forested area surrounded by vegetation so that the base station is not open to public view).~~~~

### **14.242.060 Exception from the Standards.**

Except as otherwise provided in this chapter, no WCF shall be used or developed contrary to any applicable development standard unless an exception has been granted pursuant to this section. These provisions apply exclusively to WCFs and are in lieu of the generally applicable variance provisions in Chapter 14.70 SMC.

A. A WCF exception is a Type 6 permit process.

B. Submittal Requirements. In addition to the submittal requirements for the WCF permit application, an application for a WCF exception shall include:

1. A written statement demonstrating hoe the exception would meet the criteria.
2. A site plant that includes:
  - a. A description of the proposed facility's design and dimensions, as it would appear with and without the exception.
  - b. Elevations showing all components of the WCF as it would appear with and without the exception.

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- c. Color simulations of the wireless communication facility after construction demonstrating compatibility with the vicinity, as it would appear with and without the exception.

C. Criteria. An application for a WCF exception shall be granted if the following criteria are met:

1. The exception is consistent with the purpose of the development standard for which the exception is sought.
2. Based on a visual analysis, the design minimizes the visual impacts to residential designations, the Historic District, and public places, including street rights-of-way through mitigating measures, including, but not limited to, building heights, design, bulk, color, and landscaping.
3. The applicant demonstrates the following:
  - a. A significant gap in the coverage, capacity, or technologies of the service network exists such that users are regularly unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building.
  - b. The gap can only be filled through an exception to one or more of the standards of this chapter; and
  - c. The exception is narrowly tailored to fill the service gap such that the wireless communication facility conforms to this chapter's objectives and standards to the greatest extent possible.
4. For a new tower proposed to be located within or adjacent to a residential designation, the applicant must also demonstrate that the manner in which it proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive on the values this chapter seeks to protect.

### **14.242.070 City-Owned WFC Sites.**

Except within rights-of-way, sale, lease or other use of City-owned lands for a WCF shall be subject to City Council approval following a public hearing. Public review by the City Council is not subject to the permit review timeframes in SMC 14.242.080. Through its review and approval, the City Council may deny a request to use City-owned land and may require conditions in excess of this chapter.

### **14.242.060080 Types of WCF Permits Required.**

A WCF permit shall be required prior to the construction or installation of each new or modified WCF other than a temporary WCF as defined herein. A WCF permit is required in addition to any land use, building, or right-of-way use permit or approval to which the proposal is subject under this title.

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A. A Tier 1 WCF Permit shall be required for an eligible facilities request, as defined in this chapter.

B. A Tier 2 WCF Permit shall be required for:

1. Any modification of an eligible support structure, including the collocation of new equipment, that substantially changes the physical dimensions of the eligible support structure on which it is mounted; or
2. Any collocation not eligible for a Tier 1 WCF Permit.

C. A Tier 3 WCF Permit shall be required for the siting of any WCF that is not a collocation subject to a Tier 1 or 2 WCF Permit.

### **14.242.070090 WCF Application Requirements.**

All applications for a WCF Permit shall contain the following items:

A. The applicant shall specify in writing the classification of the proposal on the siting preference hierarchy in SMC 14.242.050. Except applications for any WCF Permit are consistent with a siting preference ranking 1 WCF type, a justification for a lower ranking shall be provided.

B. The applicant shall specify in writing whether the applicant believes the application is for an eligible facilities request subject to the Spectrum Act, and if so, provide a detailed written explanation as to why the applicant believes that the application qualifies as an eligible facilities request.

C. The applicant shall submit a land use application form, as may be amended from time to time.

D. The applicant shall submit a complete and signed application checklist available from the City, including all information required by the application checklist.

E. The applicant shall remit fees as prescribed in the adopted fee schedule.

F. The application shall be accompanied by all applicable permit applications with required application materials for each separate permit required by the City for the proposed WCF.

G. For Tier 3 WCF Permits, the plans shall include a scaled depiction of the maximum permitted increase in the physical dimensions of the proposed project that would be permitted by the Spectrum Act, using the proposed project as a baseline.

H. The application submittal shall include such requirements as may be, from time to time, required by the City Planner, as publicly stated in the application checklist.

### **14.242.080100 Permit Review (“Shot Clock”) Time Periods.**

A. City review of application materials. **The timeframe for review of an application shall begin to run when the application is submitted, but shall be “tolled”, meaning temporarily suspended, if**



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the City finds the application incomplete and provides notice of incompleteness that delineates the missing information in writing. Such requests shall be made within 30 days of submittal of the application. After submittal of all additional information included on the notice(s), the City will notify the applicant within 10 days of this submittal if the additional information failed to complete the application. If the City makes a determination pursuant to SMC 14.242.080B1 that the application submitted as a Tier 1 eligible facilities request should be processed as a Tier 2 or Tier 3 WCF Permit, then the Tier 2 or Tier 3 processing time, as applicable, shall begin to run when the City issues this decision.

B. Tier 1 WCF Permit processing time. For Tier 1 WCF Permit applications, the City will act on the WCF application, together with any other City permits required for a WCF modification, within 60 days, adjusted for any tolling due to requests for additional information or mutually agreed extensions of time.

1. If the City determines that the application does not qualify as a Tier 1 eligible facilities request, the City will notify the applicant of that determination in writing and will process the application as a Tier 2 or Tier 3 WCF permit application, as applicable.
2. To the extent federal law provides a “deemed granted” remedy for Tier 1 WCF Permit applications not timely acted upon by the City, no such application shall be deemed granted until the applicant provides notice to the City, in writing, that the application has been deemed granted after the time period provided in Section B above has expired.
3. Any Tier 1 WCF Permit application that the City grants or that is deemed granted by operation of federal law shall be subject to all requirements of Section 14.242.120C and E and 14.242.130A through F.

C. Tier 2 processing time. For Tier 2 WCF Permit applications, the City will act on the application within 90 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.

D. Tier 3 processing time. For Tier 3 WCF Permit applications, the City will act on the application within 150 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.

E. Denial of application. If the City denies a WCF application, the City will notify the applicant of the denial and the reasons for the denial, in writing.

### **14.242.090110 Tier 1 WCF Permit Process and Findings.**

A. A Tier 1 WCF Permit shall be reviewed by the City Planner, whose decision shall be final and shall not be appealable pursuant to Chapter 14.75 SMC.

B. The City Planner shall grant a Tier 1 WCF Permit provided that the City Planner finds that the applicant proposes an eligible facilities request.

C. The City Planner shall impose the following conditions on the grant of a Tier 1 WCF Permit:

## **DISCUSSION ITEM 5**

1. The proposed collocation or modification shall not defeat any existing concealment elements of the support structure and
2. The proposed WCF shall comply with the development standards in SMC 14.242.120C and E and the conditions of approval in SMC 14.242.130.

### **14.242.100120 Tier 2 WCF Permit Process and Findings.**

A. A Tier 2 WCF Permit shall be reviewed by the City Planner, whose decision shall be appealable to the Hearing Examiner pursuant to Chapter 14.75 SMC.

B. The Hearing Examiner, on appeal, shall grant a Tier 2 WCF Permit subject to findings the proposed WCF complies with the development standards in SMC 14.242.120 and the conditions of approval in SMC 14.242.130 and that the justification under SMC 14.242.050A and B contain sufficient engineering analysis to justify the proposal according to the siting preference hierarchy.

### **14.242.110130 Tier 3 WCF Permit Process and Findings.**

A. A Tier 3 WCF Permit classified as a type 4 on the siting preference hierarchy in SMC 14.242.050 shall be reviewed by the Hearing Examiner as a conditional use permit. All other Tier 3 WCF Permits shall be reviewed by the City Planner. Approval shall be subject to findings of compliance with the development standards in SMC 14.242.120, the conditions of approval in SMC 14.242.130, and the conditional use approval criteria in SMC 14.65.020B, and that the justification under SMC 14.242.050A and B contain sufficient engineering analysis to justify the proposal according to the siting preference hierarchy

B. The City Planner and Hearing Examiner decisions shall be appealable according to the provisions of Chapter 14.75 SMC.

### **14.242.120140 Development Standards.**

Except as otherwise provided in this chapter, a proposed WCF project shall comply with the following standards:

A. The WCF project shall utilize the smallest footprint possible consistent with its functional service requirements.

B. The WCF project shall be designed to minimize the overall height, mass, and size of the base station.

C. The base station shall be screened from public view .

D. The WCF project shall be architecturally compatible with the existing site to the extent possible.

E. An antenna, base station, or tower shall be designed to minimize its visibility from off-site locations. Concealment, screening, and other techniques may be used to blend the facilities with the visual character of the surrounding area.

## **DISCUSSION ITEM 5**

F. A building-mounted antenna, base station, or tower shall be architecturally compatible with the existing building on which the equipment is attached.

G. Any WCF project in the Historic District, except when subject to an eligible facilities request, shall be reviewed by the Design Review Board and a recommendation issued for the project record.

H. Except where proposed within a public right-of-way, a new ~~tower~~ support structure shall be set back from the street frontage to the extent possible.

I. Where aviation safety beacon lights are required, red is preferred over white. Where applicable, applicants shall identify the type of lighting proposed and provide a justification for the use of white lights over red lights.

### **14.242.130150 Conditions of Approval.**

In addition to any other conditions of approval permitted under federal and state law and this code that the decision authority deems appropriate or required under this chapter, all WCF projects approved under this chapter, whether approved or deemed granted by operation of law, shall be subject to the following conditions of approval:

A. Permit conditions. The grant or approval of a WCF Tier 1 Permit shall be subject to the conditions of approval of the underlying permit, except as may be preempted by the Spectrum Act.

B. As-built plans. The applicant shall submit to the City Planner an as-built set of plans and photographs depicting the entire WCF as modified, including all transmission equipment and all utilities, within 90 days after the completion of construction.

C. The applicant shall hire a radio engineer licensed by the State of Washington to measure actual radio frequency emission of the WCF and determine if it meets FCC's standards. A report, certified by the engineer, of all calculations, required measurements, and the engineer's findings with respect to compliance with the FCC's radio frequency emission standards shall be submitted to the City Planner within one year of commencement of operation.

D. Indemnification. To the extent permitted by law, the applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City for its actual attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion and at the applicant's expense, elect to defend any such action with attorneys of its own choice.

E. Compliance with applicable laws. The applicant shall comply with all applicable provisions of this Code, any permit issued under this Code, and all other applicable federal, state, and local laws including, without limitation, all building codes, electrical code, and other public safety requirements. Any failure by the City to enforce compliance with any applicable laws shall not

## **DISCUSSION ITEM 5**

relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.

F. Compliance with approved plans. The proposed project shall be built in compliance with the approved plans on file with the City.

### **14.242.140160 Third Part Technical Review.**

Although the City intends for City staff to review administrative matters to the extent feasible, the City may retain the services of an independent, RF technical expert to provide technical evaluation of permit applications for WCFs. The selection of the third party expert is at the discretion of the City. The applicant shall pay the cost for any independent consultant fees, along with applicable overhead recovery, through a deposit, estimated by the City, paid within 10 days of the City's request. When the City requests such payment, the application shall be deemed incomplete for purposes of application processing timelines. In the event such costs and fees do not exceed the initial deposit amount, the City shall refund any unused portion within thirty days after the final permit is released or, if no final permit is released, within thirty days after the City receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the City before the permit is issued. The third party expert review is intended to address interference and public safety issues and be a site-specific review of engineering and technical aspects of the proposed wireless communication facilities and/or a review of the applicants' methodology and equipment used, and is not intended to be a subjective review of the site which was selected by an applicant. Based on the results of the expert review, the City may require changes to the proposal. The third party review ~~shall address~~ may include, but is not limited to, the following:

- A. The technical accuracy and completeness of submittals;
- B. The applicability of analysis techniques and methodologies;
- D. The validity of conclusions reached by the applicant;
- E. The viability of other site or sites in the City for the use intended by the applicant; ~~and~~
- F. Whether the WCF complies with the applicable approval criteria set forth in this chapter; and
- G. Any specific engineering or technical issues identified by the City.

### **14.242.150170 Public Notice.**

Public notice of WCF applications shall be in accordance with the provisions of SMC 14.55.040. Notice of WCF applications shall be provided as follows:

- A. SEPA-exempt Tier 1 and Tier 2 permits shall be exempt from notice requirements.
- B. Notice of application shall be issued for Tier 3 permits for WCFs listed as Type 3 or Type 4 on the preference hierarchy in SMC 14.242.050A.

## **DISCUSSION ITEM 5**

C. Public notice shall be in accordance with SMC 14.55.040 except that notice shall be mailed to owners of properties within a minimum radius equal to five times the height of the proposed facility, but in no case less than 300 feet.

### **14.242.160180 Removal of Abandoned Equipment.**

A WCF (Tier 1, Tier2, or Tier 3) or a component of that WCF that ceases to be in use for more than 90 days shall be considered abandoned and shall be removed by the applicant, wireless communications service provider, or property owner within 90180 days of the cessation of the use of the WCF. This presumption may be rebutted by a showing that such WCF is an auxiliary back-up or emergency utility or device not subject to regular use or that the WCF is otherwise not abandoned. If the WCF is not removed within the prescribed time period and within 90 days written notice from the City, the City may remove the WCF at the owner of the property's expense or at the owner of the WCF's expense, including all costs and attorney's fees. If there are two or more wireless communications providers collocated on a single support structure, this provision shall not become effective until all providers cease using the WCF for a continuous period of 90 days. A new conditional use permit shall not be issued to the owner or operator of a WCF or a wireless communications service provider until the abandoned WCF or its component is removed.

### **14.242.170190 Revocation.**

The City Planner may revoke any WCF Permit if the permit holder fails to comply with any condition of the permit. The City Planner's decision to revoke a permit shall be appealable pursuant to Chapter 14.75 SMC.

**Snohomish City Council Meeting Minutes Excerpt  
December 1, 2015**

**7. DISCUSSION ITEMS**

**b. Cell Tower Regulations**

The City's current wireless communication facility regulations dated from 1998 and were out of date with more recent federal rule changes. As recent history had shown, they were out of step with the expectations of portions of the community. The Planning Commission was working on a draft chapter to Title 14 intended to balance the needs for adequate cellular services in the City with federal law and community values. It was important to emphasize that one of the intents was to enhance access to good wireless services because that helped economic development and was something the community would demand.

Types of wireless communication facilities were shown. The monopole was what most people typically considered a standard cell tower. The canister monopole was initially proposed for the Boys & Girls Club. Then there were the guyed and lattice towers. A guyed tower was fairly inexpensive but the guy wires came out quite a distance with a radius of 70-80% of the height of the tower, requiring about a half acre to support one 100' tower. This type of facility was proposed for outright prohibition. An example of the lattice tower was at the Bonneville Power Administration station. The primary reason it was proposed to be prohibited was that it wasn't attractive and looked industrial.

There was the type that was inside a building such as was in the old firehouse bell tower. All the base station equipment was within the building. Facilities on top of existing utility facilities such as a pole on top of a water tower was another approach. Towers were disguised with fake trees or architectural features. There had been discussion of small cell and distributed antenna systems used in buildings and in concentrated areas like stadiums where there was a high demand and a small area. It had also been used in urban areas where a taller tower didn't work. These were preferred in some quarters because the facilities were small additions to existing architecture.

Several federal codes were important to understand in constructing a new ordinance. Those from 1996 and 2012 were intended to facilitate the rapid deployment of new wireless facilities to match increasing demand. The first was the 1996 Telecommunication Act and the second was section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012.

The 1996 TCA said that jurisdictions shall not unreasonably discriminate among providers of equivalent services. The current and proposed codes were democratic with regard to the various providers. Secondly, regulations shall not prohibit or have the effect of prohibiting provision of wireless services. The 'have the effect of prohibiting' was important to keep in mind. It was not whether the City allowed some forms of wireless communication facilities but that those allowed were not unreasonable to the point where a carrier could argue that it wasn't possible to economically construct facilities to provide their service. The jurisdiction shall act on any request within a reasonable period of time. The Federal Communications Commission interpreted this as a shot clock, the period the jurisdiction had to act on the application. It was 90 days for a collocation and 150 days for a new facility. A collocation was placing new antennas on an existing tower supplementing the existing facilities or an additional carrier on an existing tower or adjacent to

## **DISCUSSION ITEM 5**

an existing base station. Any decision to deny must be in writing and supported by substantial evidence, which was the way the City conducted all its development reviews.

A jurisdiction may not regulate based on the environmental effects of radio frequency emissions when the facility was functioning according to the FCC certification. FCC had certain thresholds for radio frequency emanations and, provided that the facility met FCC standards, the City could not use that for denial or even consideration in evaluating an application.

The 2012 federal action, section 6409, addressed collocation specifically with a number of important phrases. The 'may not deny and shall approve' took out the local discretionary authority. This applied to what was now known as 'eligible facility' requests which were requests to add infrastructure or modify existing wireless structures that did not result in a substantial change to the physical dimensions. FCC has codified what it meant to substantially change the physical dimensions. That was part of the proposed definitions within the draft chapter.

The FCC reduced the review time for eligible facilities to 60 days and stated that if a jurisdiction failed to act within the 60 day shot clock, the application was deemed granted. The shot clock was 60 days for an eligible facility; 90 days if it fell outside the FCC standards for what qualified as substantial change; and 150 days for a new facility. The FCC also determined that states and local jurisdictions had a window of 30 days following submittal of the application to request additional information. That additional information needed to be reflected on publicly available documents such as a submittal check list. The City could not randomly request more information that wasn't specified in City documents. The 'deemed granted' provision applied to eligible facilities requests, not for a new facility or a substantial modification to an existing facility. If the City missed the 90 or 150 day deadlines, there was potential for legal action by the applicant.

The proposed code provided opportunities for enhanced cellular service in the community; demand was growing year over year. The number of users and the band width required by each user was increasing as well. The City had to incorporate the federal requirements. It was very important to incorporate the shot clocks, time intervals the City has to act, within the code, as well as specifying those materials that were needed to reach a decision on compliance with City standards. Getting back to the community values, the City wanted the appearance to be consistent with the expectations of the community, balancing the need for facilities to serve the community. Those preferences for the kind of facilities the City wanted needed to be clearly enunciated within the code. Staff wanted the standards to be very clear.

Currently the only standards staff had to go by were the conditional use criteria, which were fairly loose and not dependable for regulating these facilities, particularly under the constraints of federal law with all the materials being required up front. The City needed to identify what they wanted to see and to put that into the code. Certain assumptions were needed for the types of facilities and the locations desired. The assumptions that staff and the Planning Commission had been working on with community input were (1) new equipment on an existing or inside an existing building was preferred to a new pole or facility; (2) small scale as opposed to a larger more obtrusive facility like a monopole. However new monopoles within the Industrial and Business Park zones were considered fairly benign. There were four poles currently within the Industrial and Business Park zones. He wasn't aware that those had aroused any particular concern in the community. New monopoles in the heart of the City, and residential and commercial areas (Pilchuck District, Commercial, Historic Business District) were the last places where new poles were wanted.

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Business Park and Industrial zones were shown on the map. Industrial included the wastewater treatment plant and south of the river outside the City. The Business Park zone extended along Bickford Avenue and a small area east of State Route 9. The City couldn't depend just on putting monopolies in those sites. There was a broad swath of community, particularly single-family areas, outside these areas, so they needed to ensure that all areas were serviceable within the context of the code.

Currently there were three monopolies near the Bonneville Power Administration; one between Bickford and Sinclair Avenues, and one on the BPA transmission lines east of Terrace Avenue. There was one at the police station on a utility pole, and the one inside the old firehouse building at Second Street/Avenue A.

The approach that staff and the Planning Commission had been using, and it seemed to be acceptable to members of the public that had commented at the Planning Commission meetings, was a preference hierarchy, identifying the things they would like to see first, and then in declining level of preference what the community could accept, down to the fourth tier which was 'if everything else failed, where did a facility need to go; what did the City need to accommodate to stay out of court.' There were regulatory considerations of the federal classifications for shot clocks; acknowledgement that there were three federal classifications that may not mesh with the hierarchies of preference; or our processes. There was a review process – administrative and the quasi-judicial hearing examiner process. There were the four hierarchical siting preferences; three shot clock tiers; and the two general process types. The first order of preference in the siting hierarchy included all three tiers. As currently proposed, the hearing examiner would address applications that came under the fourth order preference; and the top three preference levels would all be administrative. The idea was that the regulations would identify sufficiently what the community was willing to accept specifically enough that there is no need for a discretionary decision as would come with a quasi-judicial hearing.

In terms of where the federal requirements crossed with the local process, if an applicant said they had an eligible facilities request, the first order of business was to determine if it met the federal requirements as staff proposed to codify them in the definitions for what actually constituted that nonsubstantial change to an existing facility. Then they had to look at where it fit within the preference hierarchy and anything that was other than a first order preference had to be justified for why the first order couldn't be met. If it was the third or fourth preference level, why they couldn't meet the preferences above that. The tiers had to be included so staff was tracking the available time to process these applications. Then it had to be meshed with the City's regulatory scheme for all other permits as an administrative or quasi-judicial process. Currently the only ones that would need a conditional use permit and go through the hearing examiner process were those lowest preference monopolies.

The draft regulations started with a purpose and then extensive definitions, a lot of which were taken straight from federal law, either verbatim or paraphrased. There were several exemptions such as ham operators or emergency communications, which may fall under wireless communications but would be outside the scope of these regulations; certain prohibitions such as guyed towers and lattice towers that the City didn't want to see; and there wasn't a need for them, so applicants could meet their needs without relying on these means.

The preference hierarchy was for the towers and antennas as well as the base stations. Tomorrow night the Planning Commission will discuss whether there needed to be a preference hierarchy for the base stations. There were many types of antennas and



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structures to hold antennas but the range of options for base stations were screen them on the ground behind vegetation or architectural screening of some sort, or have them inside a building, and that was really the extent of it. That will be based more on the context of where the applicant was proposing to locate it than the City's preferences for it. The Commission will discuss whether the base stations should actually be taken out of the preference hierarchy altogether.

There were the types of permits which accord with the various shot clocks: the application requirements for each type; time periods that needed to be met; the process and findings for each type of wireless permit; certain development standards that were laid out for screening and for minimizing the intrusiveness of facilities irrespective of the type of facility. Certain facilities like the eligible facilities will not trigger many of these but they will be codified so they can be relied on for the other permit types. There were specific conditions of approval such as providing the City with as-built plans; holding the City harmless in the event anything should occur with regard to the facilities; and as several other jurisdictions have done, the draft includes the potential for third-party review. Staff may need an expert in radio frequency engineering to review it, as critical areas applications were reviewed; someone with the scientific basis to say 'this was blowing smoke' or these were accurate. Staff could draw on that expertise and charge it back to the applicant as needed. Staff had talked with several jurisdictions that had this provision on the books and none of them had availed themselves of the option of bringing in an expert third party. Other provisions include removal of abandoned equipment, permit revocation should they not meet the conditions of approval; and finally one that hadn't been added yet in the current draft, but staff felt it was important, to identify what sort of public notification would be required. There was sensitivity to it in the public but because there was such variety, everything from essentially a building permit to a conditional use permit. The code should identify specifically what triggers public notification; and what level of public notification. That was pending the Planning Commission's discussion.

The siting hierarchy for anything but the most preferred group of facilities will require justification. The approval criteria identified certain criteria by tier type which was the first, second and third tier according to the federal identification of facility types. The development standards and compliance with those standards and conditions of approval were what the City was specifying.

Mayor Guzak noted the base station proposed at the Boys & Girls Club was about 700 square feet; that was a substantial structure. At the first hearing, she heard the applicant's testimony about the need of that size for the base equipment; it was bigger than a three-car garage. The City needed some criteria for what the base station was going to look like. If it was attached to a building it needed to be compatible with the structure of the building; if it was going to be freestanding, it needed to be compatible with the neighborhood it was in. The Planning Commission was thinking about taking away the tiering potential for base stations but hearing that was a warning flag for her.

Mr. Dennison agreed that was a very important point. Just because it was not in the preference hierarchy didn't mean there weren't standards for it. Those were included in the development standards including screening base stations from public view; making it architecturally compatible with the existing site to the extent possible; minimizing the overall height, mass, and size of the base station; using concealing and screening techniques; making it architecturally compatible with an existing building when attached to the building; and applicant justifications for why they weren't putting it in a building rather than using on-the-ground screening which would probably relate more to the context of the site than community preference.

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Mayor Guzak asked what “defeated” meant. For example, for either a tower or base station, the proposed modification would cause the concealment or camouflage elements of the tower or base station to be defeated.

Mr. Dennison said that was from the federal code language. It meant that the efforts to hide it would be lost if the modification occurred. There had to be respect for any prior approval of a facility that included some screening or concealment elements.

Councilmember Kaftanski complimented staff and the Planning Commission for putting this thorough study together. It was breaking new ground. He had two questions. One was showcased at the Planning Commission where several citizens had been actively involved with the issue. Please characterize the general comments that were received by the Commission with respect to the draft provided tonight.

Mr. Dennison said speakers had been supportive of the approach and they believed the Commission was on the right track. The hierarchy had gone over very well. There had been two suggestions that would be discussed by the Planning Commission tomorrow. Both were a little problematic from a regulatory standpoint, for compliance with federal law, and for equity. One was to have special provisions that would apply to portions of the City south of Sixth Street but not north of Sixth Street. The rationale was that this was an older part of town and represented to a great extent the City’s brand in terms of the historic character. One question was whether that could be accomplished and still not have the effect of prohibiting the provision of cell service in this part of town. There may also be the equity issue of whether the neighborhoods south of Sixth Street were more deserving of special consideration than those north of Sixth Street. A lot of the City’s population lived north of Sixth Street. The other was a request to include provisions to limit the visibility of new facilities at gateways and from major corridors. Part of that was because the proposed tower at Averill Field was very apparent from the Second Street entry to the City. He understood the intent but unless a geographic area was being identified, view-scapes were difficult to enforce, difficult to write for, and disallowing facilities that were invisible from a major transportation corridor was difficult. Four monopoles were already visible from Bickford and Avenue D. That conflicted with the proposal to allow new canister-type poles within the Industry and Business Park designations where they would be visible from the major corridors. He appreciated the intent but wasn’t sure how implementable those concepts were, but in general there has been support. The speakers felt the code was responding to their concerns.

Councilmember Kaftanski saw several references to 30 and 60 days. Were those calendar or business days? Was there an opportunity to specify which of those it would be in the version that came back to Council?

Mr. Dennison said it would. According to federal law it would be calendar days. The other related point was the chapter copied federal law in using the term “tolled” which meant to temporarily suspend. That may not be clear to people who hadn’t read the federal codes. Staff will include a clarification of terms within the code.

Councilmember Burke had a question about the Land Use Table and what the acronyms in some cells stood for.

Mr. Dennison clarified that was the existing code. This applied to all land uses outside the Pilchuck District in the City. “P” meant outright permitted, which did not require a land use permit. “C” was conditional use permit so that went through the hearing exam-

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inner process. Numbers beside either letter were the conditions that applied specifically to that use in that zone.

Councilmember Rohrscheib said they hadn't talked about a location yet which was near the current one proposed such as the library. It was a pretty large building already and the cell tower wouldn't stand out that much at that location.

Mr. Dennison had heard nothing from the current applicant since the application was withdrawn. The applicant had been looking at a utility pole extension similar to the one adjacent to the police station, one of the 70' poles. The issue there as elsewhere was where to put the base station. This also referred back to the issue of the size of the base station. The one at the police station couldn't be more than a few hundred square feet. It was much smaller than 750 sf. He wasn't sure what the calculation was for the Boys & Girls Club addition although it did incorporate the area required for the tower itself. It would be up to the Sno-Isle Library District if they wanted to lease part of their site for the base station. It did seem like a fairly innocuous place, capable of being landscaped and screened.

Mayor Guzak asked about the location proposed at the Boys & Girls Club. There had been some questions about the covenant or deed. What was the history there?

Mr. Dennison said it was a continuing point of contention with certain members of the public. The block between Second and Third Streets that included Hal Moe Pool, Boys & Girls Club, and the skate park was received by the City in the early 1920's in three grants. The southern two were from Snohomish County and the northern one, from about the midpoint of the Hal Moe building north, was from a group called the Snohomish Playgrounds Association. Each of the deeds included the 'for playground purposes only' restriction. The deed restriction was removed from the central portion of the site. It was extinguished by the county since they were the grantor in 1988, which coincided with the construction of the building around the Hal Moe Pool. The deed restriction on the northern portion of the building north to Third Street exists yet today. In December 2014 City staff asked county staff if the county would agree to extinguish the covenant for the area remaining from about the north line of the Club south to Second Street. Correctly or not, the request wasn't seen as a policy or practical change for several reasons. While the site was used as a playground for decades, the decision by a former Council to provide the land for construction of the Boys & Girls Club made that restriction somewhat pointless since it was no longer 'for playground purposes only' with a building in the middle of it. The same covenant was removed from the parcel to the north in 1988 with no evident detrimental effects or public concern that staff could find in the record. The City Council had full legislative authority to determine what occurred on the land through the zoning process as well as full authority as property owner to determine what uses or activities may occur there. As the covenant was imposed by an outside agency, it didn't seem to be particularly reflective of any specific City policy and therefore staff did not perceive this was contrary to any intended policy. The combined site, and in particular the southern site, was used and will continue to be used for public recreation irrespective of the existence of the covenant. All that said, there was still some concern by members of the public that the request went to the county and that the action was taken by the Snohomish County Council to lift the covenant without local public discussion. If the City Council believed that there was an issue to be addressed, staff would be happy to come back and address this in terms of potential modifications to tighten up zoning, with options for another covenant that the City could apply, although if the City applied it, the City could just as easily remove it. And it would have to be something other than 'for playground purposes only' since that went away with construction of the Boys & Girls Club. Staff

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would be happy to bring back a discussion if the Council felt there was an outstanding issue.

Councilmember Burke considered two separate issues when he was looking at land use and conditional permitting for wireless towers. One was the idea of removing things like public parks from the available categories of zoning types in which to put a cell tower. The second thing about that particular property was the 1922 grant. A lot of the uses on the property seemed to be in the spirit of the grant. When he thought about the rest of the property and what to do with it, he was willing to consider creating a structure that made it look like property for kids.

Mayor Guzak confirmed the Boys & Girls Club was considered appropriate, given the covenant just recently lifted.

Mr. Dennison said it was appropriate for a cell tower in that the existing code allowed cell towers as a conditional use in the Public Park zone. In the proposed code, public parks, recreational facilities including parks, were not eligible sites for monopoles.

Councilmember Rohrscheib asked while they were speaking about the Hal Moe area, was there a deed on that property currently solely as a park?

Mr. Dennison said it was deeded to the City 'for playground purposes only.'

Councilmember Rohrscheib said the Council had talked a few months ago about senior housing and the idea of transforming that property into senior housing. If that went forward, the deed would have to be changed. Was that something the Council could vote on or was it a bigger issue?

Mr. Dennison thought there were two issues. One was what would have to be done about a deed restriction applied by an agency, the Snohomish Playgrounds Association, that probably didn't exist anymore or the City couldn't identify successors and interests. The other issue for housing on that site was that the conditions under which the school district deeded it back to the City did not include housing. Two deeds were working against senior housing at that site.

Mr. Weed said the only practical way was by filing a Quiet Title action where the party that imposed the restriction may not exist any longer, would not appear, and by default the court might enter an order releasing the restriction if there was good cause or reason that could be shown why it should be done. There would be mutual cooperation and understanding with the school district as they would have to be a cooperating party in order to remove that restriction.

Councilmember Burke asked about the zoning map. Wasn't the Snohomish Iron Works building Industrial property?

Mr. Dennison said it was Commercial. The Visitor Information Center was within the Historic Business District but west to SR 9 was all Commercial.

Mayor Guzak asked when this would come back to Council. It was mentioned there would be a couple more meetings with the Planning Commission which met once a month. That meant maybe February?

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Mr. Dennison said it was hoped the Planning Commission would hold a public hearing in January, provided that they felt comfortable with it, following tomorrow night's meeting to have a basis for a public hearing.

Mayor Guzak thanked Mr. Dennison for the report and all his work. She knew he had made it a priority and the Council appreciated it.